

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

SIGNET ELECTRONIC SYSTEMS, INC.,
Plaintiff

v.

NORMAN TAYLOR, TAYLOR NETWORK
COMMUNICATIONS, INC., ANTHONY
BERRY, SCOTT CARPENTER, SHERRIE
HASHEY, STEVEN LUZZI, and KENT
QUIET,

Defendants

Civil No. 03-280-P-C

Gene Carter, Senior District Judge

**MEMORANDUM OF DECISION GRANTING IN
PART AND DENYING IN PART PLAINTIFF'S
MOTION FOR A TEMPORARY RESTRAINING ORDER**

Before the Court is Plaintiff's Motion for a Temporary Restraining Order against the Defendants, Norman Taylor, Taylor Network Communications, Inc., Anthony Berry, Scott Carpenter, Sherrie Hashey, Steven Luzzi, and Kent Quiet:

- (a) requiring the Defendants immediately to return all documents they took from Signet;
- (b) prohibiting the Defendants from disclosing or using any of Signet's confidential information; and
- (c) prohibiting the Defendants, for one year following their resignations from Signet, from soliciting or accepting business from Signet's current or former customers, and from soliciting, hiring, or attempting to hire Signet's employees.

Plaintiff's Motion for Temporary Restraining Order (Docket Item No. 2) at 1-2. That claim arises from allegations in the Complaint that these Defendants have each left their employment with the Plaintiff and commenced working for a competing firm and, in doing

so, have violated the noncompetition terms of their employment contracts¹ with the Plaintiff and in other respects violated their legal obligations to the Plaintiff in the conduct of their employment activities after the employment of the Plaintiff.

¹The noncompete provisions of the Defendants' respective employment contracts in the cases of Mr. Berry, Mr. Carpenter, Ms. Hashey, Mr. Luzzi, and Mr. Quiet, all contain the following language:

(b) For a period of one year after the termination of my employment with [Signet] for any reason, I shall not, on my own behalf, or as owner, manager, stockholder, consultant, director, officer or employee of any business entity, participate in the development or provision of goods or services provided (or proposed to be provided) by the [Signet] without the express written authorization of [Signet].

(c) For a period of one year after the termination of employment with [Signet] for any reason, I shall not solicit, induce, attempt to hire, or hire any employee of [Signet] (or any other person who may have been employed by [Signet] during the term of my employment with [Signet], or assist in such hiring by any other person or business entity or encourage any such employee to terminate his or her employment with [Signet].

. . . The section of the Hashey Noncompete Agreement entitled "Unauthorized Disclosure of Confidential Information" provides as follows.

While employed by [Signet] and thereafter, I shall not, directly or indirectly, use any Confidential Information (as hereinafter defined) other than pursuant to my employment by and for the benefit of [Signet], or disclose to anyone outside [Signet] any such Confidential Information. The term "Confidential Information" as used throughout this Agreement shall mean all trade secrets, proprietary information and other data or information (and any tangible evidence, record or representation thereof), whether prepared, conceived or developed by an employee of [Signet] (including myself) or received by the Company from an outside source, which is in the possession of [Signet], or which might permit [Signet] or its customers to obtain a competitive advantage over competitors who do not have access to such trade secrets, proprietary information, or other data or information. Without limiting the foregoing, Confidential Information shall include: . . .

(b) The name of any customer, employee, prospective customer or consultant, any sales plan, marketing material, plan or survey, business plan or opportunity, product or development plan or specification, business proposal, financial record, or business record or other record or information relating to the present or proposed business of the [Signet].

. . . The section of the Hashey Noncompete Agreement entitled "Return of Property" provides as follows:

If I cease to be employed by [Signet], . . . I shall return promptly any computer programs, specifications drawings, blueprints, data storage devices, reproductions, sketches, notes, reports, proposals, business plans, or copies of them, other documents or materials, tools, equipment, or other property belonging to [Signet] or its customers.

Complaint.

With respect to the Defendants Norman Taylor and Taylor Network Communications, Inc., it does not appear that those Defendants are presently under any contractual obligation arising out of an employment

I.

This Court has previously set the parameters of the evidentiary predicate to be met in the case of a request for preliminary injunction in the following words:

In order to prevail on its request for preliminary injunctive relief, the plaintiffs must satisfy four essential requirements. This Court had had occasion in the past to set out succinctly those requirements in *UV Industries, Inc. v. Posner*, 466 F. Supp. 1251 (D. Me. 1979) (per Gignoux, J.).

It is well settled law that, in the ordinary case, a plaintiff must satisfy four criteria in order to be entitled to a preliminary injunction. The Court must find: (1) that the plaintiff will suffer irreparable injury if the injunction is not granted; (2) that such injury outweighs any harm which the granting of injunction relief would inflict on the defendant; (3) that plaintiff has exhibited a likelihood of success on the merits; and (4) that the public interest will not be adversely affected by the granting of the motion. *Id.* at 1255; *see also Women's Community Health Center, Inc. v. Cohen*, 477 F. Supp. 542, 544 (D. Me. 1979) (per Gignoux, J.). This formulation of these criteria has been approved by the United States Court of Appeals for the First Circuit. *Planned Parenthood League v. Bellotti*, 641 F.2d 1006, 1009 (1st Cir. 1981) (quoting *Women's Community Health Center, Inc.*); *Keefe v. Geanakos*, 418 F.2d 359 (1st Cir. 1969); *Automatic Radio Manufacturing Co., Inc. v. Ford Motor Co.*, 390 F.2d 113 (1st Cir. 1968), *cert. denied*, 391 U.S. 914, 88 S. Ct. 1807, 20 L. Ed. 2d 653 (1968). This Court has indicated in the recent past the continuing applicability of these requirements to a request for temporary injunctive relief. *Stanton v. Brunswick School Department*, 577 F. Supp. 1560 (D. Me. 1984) (per Carter, J.); *Sheck v. Baileyville School Committee*, 530 F. Supp. 679 (D. Me. 1982) (per Cyr, C.J.).

Further, it is well established general law with respect to equitable injunctive relief that the Court is to bear constantly in mind that an '[i]njunction is an equitable remedy which should not be lightly indulged in, but used sparingly and only in a clear and plain case.' *Plain Dealer Publishing Co. v. Cleveland Type. Union* \$ 53, 520 F.2d 1220, 1230 (6th Cir. 1975), *cert. denied*, 428 U.S. 909, 96 S. Ct. 3221, 49 L. Ed. 2d 1217 (1977). The Court's hesitation to utilize so drastic an aspect of its prerogative should be heightened where the relief requested

contract with the Plaintiff. The reason for this is that, as alleged in the Complaint, Mr. Taylor was released from his employment contract provisions of this nature by the Plaintiff, Complaint, ¶ 16 at 4, and the Defendant Taylor Network Communications, Inc. was never bound by any such contract because it is a separate corporate entity apparently created by Mr. Taylor after he had left the employment of the Plaintiff, *id.*, ¶ 4 at 2.

is only temporary in nature. *Kass v. Arden-Mayfair, Inc.*, 431 F. Supp. 1037, 1047 (C.D. Cal. 1977). *Saco Defense System Division, Maremont Corp. v. Weinberger*, 606 F. Supp. 446, 449-50 (D. Me. 1985). See also *Kardex Systems, Inc. v. Sistemco, N.V.*, 583 F. Supp. 803, 809 (D. Me. 1984). In order to make a suitable showing of irreparable injury, the moving party must establish a colorable threat of immediate injury, see *Massachusetts Coalition of Citizens With Disabilities v. Civil Defense Agency*, 649 F.2d 71, 74 (1st Cir. 1981), and the absence of any adequate remedy at law for such injury. *McDonough v. United States Department of Labor*, 646 F. Supp. 478, 482 (D. Me. 1986). Finally, where economic damages are the injury relied upon, it is to be remembered that economic harm, in and of itself, is not sufficient to constitute irreparable injury. *Id.* See also *McDonough v. Trustees of University System of New Hampshire*, 704 F.2d 780, 784 n.2 (1st Cir. 1983).

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop, 839 F. Supp. 68, 70 (D. Me. 1993).

The Court concludes that Plaintiff's allegations make a showing of irreparable injury in respect to the Defendants' conduct (except as to the Defendant Taylor and Taylor Network Communications, Inc.) in violating the "Return of Property" clause of the noncompete terms of their respective employment contracts with the Plaintiff by refusing to return and by continuing to use the properties identified therein for the same reasons as this Court set forth in its Memorandum of Decision in the case of *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68, 71-72 (D. Me. 1993). The Court also concludes that with respect to this conduct of those Defendants, Plaintiff has satisfied the remaining three elements of the *Saco Defense* test. Plaintiff's injury in this respect clearly outweighs, in effect, any injury that those named Defendants will sustain as a consequence of the granting of preliminary injunctive relief to the Plaintiff redressing these violations of their employment obligations. Plaintiff is entitled to the confidentiality and possession of the enumerated properties under the alleged contract provisions. Plaintiff has alleged, in addition, a persuasive preliminary demonstration that it is likely to succeed at trial on the merits of these claims that these Defendants are in violation of the "Return of Property" provision in their respective uses and

possessions of the enumerated properties. These allegations, if proven, establish that these Defendants have no right to these properties or the contents of them, and it is highly likely, in the view of the Court, that their respective possessions and uses of them will ultimately be found to be unlawful. To require that they immediately terminate their injurious and probably unlawful possession and use of the properties inflicts no cognizable injury upon them. Finally, the public interest will not be adversely affected by the granting of preliminary injunctive relief because such relief simply enforces the contractual rights of the parties and has no negative effect discernible to the Court upon any public interest, if any exists, in the present controversy. If anything, the relief will further the public confidence in the enforceability of valid private contractual commitments.

The Court is satisfied that the Plaintiff has demonstrated as against these named Defendants a basis for the issuance of preliminary injunctive relief in the nature of the temporary restraining order to prevent further irreparable injury to itself and its clients that is likely to occur before counsel can be heard on the merits of a preliminary injunction as a result of the named Defendants' use and possession of the properties in question. A temporary restraining order framed to accomplish that result will issue forthwith.

II.

As to the Plaintiff's claim for preliminary injunctive relief "(c) prohibiting the Defendants, for one year following their resignations from Signet, from soliciting or accepting business from Signet's current or former customers, and from soliciting, hiring or attempting to hire Signet's employees," Plaintiff's Motion for Temporary Restraining Order at 1-2, the Court is satisfied from a careful review of the case that the Plaintiff has failed to make a showing of irreparable injury that is cognizable under the existing law of this district and circuit. The Plaintiff's claim for such relief rests upon the assertion that

[l]osses caused by interference with customer relationships or confidential information are by their nature difficult to measure. Thus, it will not be possible to calculate the loss of future profits that Signet may suffer if the Defendants are permitted to continue to disregard their contractual obligations. Further, the substantial likelihood of success on the merits of this case 'should result in a less stringent requirement of proof or irreparable injury.'

Plaintiff's Motion for Temporary Restraining Order at 9.

The Court concludes that Plaintiff has failed to make a showing of irreparable injury with respect to this last element of requested relief. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68, 72-75 (D. Me. 1993); of *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bennert*, 980 F. Supp. 73, 74-76 (D. Me. 1997); *Rencor Controls, Inc. v. Stinson*, 230 F. Supp. 2d 99 (D. Me. 2002); *American Express Financial Services v. Temm*, 241 F. Supp. 2d 30 (D. Me. 2003). It is the well-established law of this district by the above authorities that the Court will not exercise its equity jurisdiction to grant preliminary injunctive relief where a legal remedy in damages is available to the party requesting such relief in order to address the wrong to be averted and that the uncertainty of result or extent of travail involved in the pursuit of the legal remedy does not convert a monetary loss to an irreparable injury.

Accordingly, the Court hereby **GRANTS**, in part, the requested preliminary injunctive relief and will issue its temporary restraining order enjoining the Defendants Anthony Berry, Scott Carpenter, Sherrie Hashey, Steven Luzzi, and Kent Quiet from any further possession or use of all documents which they have taken from Signet Electronic Systems, Inc. upon the termination of their employment relationship with Signet and ordering that they return to Signet or its designated representative all such properties within twenty-four (24) hours of the issuance of the temporary restraining order and further enjoining the Defendants from disclosing or using any of Signet's confidential information as reflected in

such documents or properties. The requested temporary restraining order is hereby **DENIED** in all other respects.

/s/ Gene Carter
Gene Carter
Senior United States District Judge

Dated at Portland, Maine this 9th day of December, 2003.

[Counsel List Follows.]

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